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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/821,890	03/21/1997	THOMAS M. COWAN	60798	5700

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CHICAGO, IL 60603-3406

EXAMINER

SRIVASTAVA, VIVEK

ART UNIT	PAPER NUMBER
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2611

17

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/821,890

Applicant(s)

COWAN ET AL.

Examiner

Vivek Srivastava

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 1999.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Since Applicant's failed to provide an a amendment or any kind or response to the final rejection, this action has been made as a first action final. It should be noted that the CPA was not accompanied by an amendment or a response, as a result, the following rejection is identical to the previous final rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because:

- In claim 1, lines 19-21, the limitation regarding "the spectrum of channels on less than all of the plurality of distribution trunks including the substitute television program signal" is not understood because of the awkward wording. Therefore, the limitation can not be ascertained.
- In claim 15, lines 2-4, the limitation "wherein the channels of the first channel modulated signals are distinct from the second modulated signals" is not understood. Therefore, the limitation can not be ascertained.

- In claim 17, lines 4-6, the limitation "the channel modulators comprising a number of modulators equal to the number of distribution trunks for each channel of the second channel modulated signals" is not understood. Therefore, the limitation can not be ascertained.

The art rejection of claims 1-4 and 15-17 is applied as best understood in light of the rejection under 35 U.S.C. 112 second paragraph discussed above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallerstein (US 3,366,731) in view of Eskin et al (US 4,331,973)

Regarding claim 1, Wallerstein discloses a system permitting consumer response analysis including a television distribution system wherein the headend transmits normal television program signal and substitute program signals for demographically selected viewers distributed (see Abstract, col. 1-2). Applicant's distribution trunk reads on Wallerstein's split cable system where a plurality of channels and cable segments are directed to a geographically area of the community (see col 2. lines 40-64). The

claimed signal distribution circuitry for receiving the normal and substitute television program signals and for combining into spectrums of channels on a plurality of distribution trunks reads on the fact that the system of Wallerstein carries a plurality of cable segments permitting blocking and substituting television signals on any channel in any segment (see col. 2 lined 40 – col 3 line 20). The difference is Wallerstein does not mention a plurality of product sales collection units and a market research computer as claimed. However, Wallerstein explicitly shows that one of the objects of the system is to measure the effectiveness of consumer response as compared to response to other media (see col 1, lines 45-49). Eskin shows a plurality of scanners in stores for collecting information representing purchases by the consumers. Clearly the information is processed by a computer doing market research (see Figure 1). The difference is Eskin does not specifically mention that the store is collecting purchase information from consumers connected to the same distribution trunk. Since each trunk targets a specific audience, it would have been obvious to one of ordinary skill in the art to modify the system of Wallerstein by adding product sales units as taught by Eskin in order to measure the effectiveness of television advertising and by further collecting purchases from consumers attached to the same trunk in order to obtain meaningful survey results.

Regarding claim 2, a controller apparatus for controlling signal substitution on the distribution trunk is inherently present in the system of Wallerstein in order to block and substitute signals (as described in col. 2 lines 40-70). The difference is Wallerstein does not show that the information is provided to the market research computer system.

In order to research the effectiveness of television advertising, clearly the information on substitute signals must be provided to the computer system. Therefore, it would have been obvious to one of ordinary skill in the art to modify the system of Wallerstein by using a computer as discussed in claim 1 above and by providing the substitute information to the computer in order for the computer to process the results to see how substitute signals influence consumers purchasing behavior.

Regarding claim 3, the system of Wallerstein clearly has consumers distributed throughout a viewer community because their behavior in response to substituted signals is the main subject of interest in this system. Furthermore, Wallerstein' shows a split cable system for generating a plurality of identical copies (see col 2, line 35 – col 3 line 20). The difference is Wallerstein does not mention that the signals are conveyed by fiber optic to geographically grouped consumers. Official Notice is taken that it is well known in the art to use fiber optic to transmit signals. Therefore, it would have been obvious to one of ordinary skill in the art to modify the method of Wallerstein by transmitting over fiber optic to geographically grouped consumers in order to benefit from the quality of fiber optic transmission.

Regarding claim 4, although Wallerstein and Eskin do not mention that a sales collection unit is located in a store shopped predominantly by consumers from one of the geographic areas as claimed, it would have been obvious to one of ordinary skill in the art to add such a sales collection unit since the system is intended to gather information about buying behavior of panelists in a particular zone of survey.

Regarding claim 5, Wallerstein discloses a method for analyzing consumer response including distributing television programming to a plurality of households. The step of presenting substitute and normal television programming to different zones is taught by Wallerstein when Wallerstein shows that "taking a series of four adjacent households, each household may be on a different wired system" (see column 2, lines 2-4). Wallerstein does not show the steps of associating zones with data collection points, assigning addresses to the collection points, accumulating consumer purchase data and analyzing the collected data as claimed. Eskin shows that each collection point such as stores and scanners has an ID in the computer zone (see Figure 1). Furthermore, since the substitute signals target consumers in a zone, clearly it is beneficial to associate a zone with data collection points in the same zone. Therefore, it would have been obvious to one of ordinary skill in the art to modify the system of Wallerstein by broadening each household into a zone and by adding identifiable data collection points as taught by Eskin and by further associating data collection points with each zone in order to research a group of households receiving the same substitute signals in that zone for market research purpose.

Claim 6 merely reads on the fact that the system of Wallerstein as modified by Eskin identifies and stores purchasing behaviors of consumers in a targeted zone.

Regarding claim 7, Eskin discloses storing demographic data (see col. 3 line 2). Therefore, it would have been obvious to one of ordinary skill in the art to modify the method of Wallerstein by adding demographic data to the system in order to research consumers sharing similar demographic data.

Regarding claim 8, although Wallerstein and Eskin do not mention that data collected only for similar demographic data description, it would have been obvious to one of ordinary skill in the art to do so in order to obtain meaningful market research results.

Regarding claim 9, Wallerstein discloses a television and analysis system including a plurality of normal channel sources and a source of a substitute channel (see Abstract), signal distribution circuitry (see figure 1), apparatus for generating a plurality of substantially identical copies to different households (see col 2, line 20 – col 3 line 20). Wallerstein teaches the concept of zone when Wallerstein shows that “Taking a series of four adjacent households, each household may be on a different wired system” (see col 2 lines 2-4). The difference is Wallerstein does not show a plurality of customer purchase data collectors and data analysis computer system. Eskin shows a plurality of customer purchase data collectors 16 and data analysis computer 18 (see figure 1). Therefore, it would have been obvious to one of ordinary skill in the art to modify the system of Wallerstein by adding a plurality of data collectors and a data analysis computer system as taught by Eskin in order to systematically collect and process data showing purchasing behaviors of consumers targeted by substitute signals.

Regarding claim 10, the system of Wallerstein tracks the behavior of subscribers exposed to substitute programs. Since the programs are distributed in a specific area, it would have been obvious to one of ordinary skill in the art to locate customer purchase

data collector in a store a majority of whose purchasers are subscribers on one of the zones in order to receive accurate meaningful results for the survey.

Regarding claim 11, although Wallerstein does not show a distribution trunk connecting channels to zones separated by zones connected to other trunks, it would have been obvious to one of ordinary skill in the art to do so in order to select panelists demographically because not all subscribers with the same demographics characteristics reside in the same zone served by the same trunk.

Regarding claim 12, the system of Wallerstein distributes substitute programs to selected subscribers thus it would have been obvious to one of ordinary skill in the art to select the zones connected to a distribution trunk in such a way that they demographically represent the community for market research purposes because this would facilitate distribution of specific advertisements to a targeted group of subscribers.

Regarding claim 13, official notice is taken that it is well known in the art to use fiber optic to transmit signals. Therefore, it would have been obvious to one of ordinary skill in the art to modify the method of Wallerstein by transmitting over fiber optic to geographically grouped consumers in order to benefit from the quality of fiber optic digital transmission.

Regarding claim 22, Wallerstein discloses a method for use in a consumer response analyzing system comprising apparatus for distributing television to a plurality of zones in a community of consumers (see figure 1). The difference is Wallerstein does not show a market research computer system. Eskin discloses such a computer system (see the Abstract). Note:

- the step of identifying a consumer parameter is met when panelists are selected
- the step of storing in the computer data relating panelist parameters and zones is met when the consumer's ID is scanned by the store scanner
- the step of "presenting television programming....second set of zones" is met when the operator of the system controls the television messages being received by the panelist (see col 2 lines 54-57)
- the step of "conducting a survey....consumer purchase data" is met when the panelists present their ID to be scanned at the store;
- the step of "analyzing the survey....of substitute programming" is met when the data collected at stores are processed at the central processor 18 (see figure 1). Furthermore, it is clear that storing data representing the associations between consumer parameters and zones must be performed before presenting substitute television programs in order to assess the effectiveness of such programs. Therefore, it would have been obvious to one of ordinary skill in the art to implement the method of Wallerstein by computerizing the method as taught by Eskin in order to systematically process data for research purpose.

Regarding claims 23-25, the method taught by Wallerstein and Eskin identifies panelists by their scanned ID at the store. Each bar code corresponds to a panelist receiving station which inherently contains other consumer parameters such as

telephone number, address and name. Furthermore, it would have been obvious that the information is stored in the market research computer as claimed for the purpose of identification in order to assess the effectiveness of substitution programs.

Claims 14-21 rejected under 35 U.S.C. 103(a) as being unpatentable over Wallerstein in view of Eskin, and further in view of Oberle (US 5,389,964).

Regarding claim 14, although Wallerstein and Eskin do not mention combiners, it is well known in the art to use a combiner in signal distribution system as shown by Oberle (see combiner 148 in Figure 4). Thus it would have been obvious to one skilled in the art to modify the system of Wallerstein and Eskin by adding combiners as taught by Oberle in order to combine the received programs into channels compatible with the transmission and reception of cable television signals. Besides, it would have been obvious that different trunks would require different combiners, thus the number of combiners should be equal to the number of distribution trunks in order to have full control over what signals to send for each trunk.

Regarding claim 15, Eskin discloses the concept of distinct signals (see column 2 lines 40-41).

Regarding claim 16, official notice is taken that it is well known in the art to use a video switch to selectively connect the inputs to the outputs ports. Furthermore, Wallerstein clearly shows that the signals at the output ports are combined into a plurality of cable television channel spectrum (see col 2 lines 45-49) equal to the number of distribution trunk (see col 2 lines 57-60). Therefore, it would have been

obvious to one of ordinary skill in the art to modify the system of Wallerstein by adding a video switch in order to selectively connect signals at the output ports and to combine output ports into cable TV spectrums for each distribution trunk in order to target various audiences.

Regarding claim 17, Wallerstein discloses the use of modulators 66. Furthermore, official notice is taken that it is well known in the art to use a video switch to selectively connect video channels. Therefore, it would have been obvious to one of ordinary skill in the art to modify the system of Wallerstein by connecting modulators to the outputs of a video switch in order to select and transmit the desired signals to targeted audiences.

Regarding claim 18, see reasons for rejection as discussed above.

Regarding claim 19, see reasons for rejection as discussed above.

Regarding claims 20 and 21, Wallerstein discloses the concept of providing normal channel and substitute channel to the distribution trunk (see column 2). Although Wallerstein does not explicitly mention that a switched combiner is used, it is well known in the art as shown by Oberle to use a switched combiner to combine signals and route the desired signals to the distribution trunk (figure 4). Thus it would have been obvious to one skilled in the art to modify the system of Wallerstein by suing a switched combiner in order to select the combined modulated channels to a target audience.

Conclusion

All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872 - 9314, (for formal communications intended for entry)

Or:

(703) 308- 5399 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Art Unit: 2611

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Vivek Srivastava whose telephone number is (703) 305 - 4038. The examiner can normally be reached on Monday - Thursday from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andy Faile, can be reached at (703) 305 - 4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305 - 3900.

VS

1/8/04



**VIVEK SRIVASTAVA
PRIMARY EXAMINER**